

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BELINDA D. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
Bay Pines, Fla.

*Docket No. 96-1479; Submitted on the Record;
Issued December 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined there was an overpayment of compensation in the amount of \$196.14 as there were no deductions made for basic life insurance and post-retirement basic life insurance for the period December 9, 1994 to July 22, 1995; and (2) whether the Office properly determined that the overpayment could not be waived.

In the present case, on March 16, 1995 the Office notified appellant that it had accepted her claim for depression. Appellant was also advised that compensation benefits would be paid effective December 13, 1994 to reflect total disability.¹ On July 17, 1995 the Office advised appellant that it had received notification from the Office of Personnel Management that appellant had basic life insurance coverage. The Office noted that deductions must be made for all enrollees who had this coverage and that beginning July 23, 1995 deductions would be made every four weeks in the amount of \$9.90 for basic life insurance and \$14.40 for post-retirement basic life insurance. Appellant was also advised that she would be notified of the amount of retroactive premiums due by separate letter. By preliminary determination dated October 25, 1995, the Office advised appellant that an overpayment of compensation had occurred in her case in the amount of \$196.14 because premiums for basic life and post-retirement basic life insurance were not withheld for the period December 9, 1994 through July 22, 1995. The Office also advised that a finding had been made that appellant was without fault in the matter of the overpayment. Appellant was advised that if she disagreed with the fact or the amount of the overpayment, she had a right to submit new evidence in support of her contention. The Office explained that when a claimant was found to be without fault in the occurrence of an overpayment, the law stated that recovery may not be made if it could be shown that such

¹ On April 17, 1995 the Office issued a preliminary determination advising appellant that an overpayment of compensation had occurred in her case in the amount of \$333.05 because the Office failed to deduct for health benefits insurance and optional insurance for the period December 31, 1994 through April 1, 1995. The record does not indicate whether this preliminary decision was finalized. This issue is not before the Board on this appeal.

recovery would defeat the purpose of the law or would be against equity and good conscience. Thus appellant could seek waiver of the overpayment by submitting an explanation of the reasons for seeking waiver and fully completing the enclosed overpayment recovery questionnaire and supporting documents, within 30 days. Appellant did not respond to the Office's preliminary determination. On March 11, 1996 the Office finalized the overpayment determination.

The Board finds that the Office properly determined that an overpayment of compensation was created in this case in the amount of \$196.14 as there were no deductions made for basic life insurance and post-retirement basic life insurance for the period December 9, 1994 to July 22, 1995.

In the present case, the record reveals that appellant was enrolled in a basic life insurance program and a post-retirement basic life insurance program prior to and while in receipt of compensation benefits. The record further reveals that the premiums for this insurance were not deducted during appellant's receipt of compensation benefits during the period December 9, 1994 to July 22, 1995 in the amount of \$196.14. The Board finds that the Office properly determined that this underdeduction constituted an overpayment of compensation.²

As appellant was not aware that these life insurance premiums were not being deducted, and did nothing to cause this failure to deduct the premiums, the Office properly found that she was without fault in the creation of the overpayment. As appellant was without fault in the creation of the overpayment, the Office properly advised appellant that she could request waiver of recovery of the overpayment.

The Board further finds that the Office properly denied waiver of recovery of the overpayment.

When the Office advised appellant that a preliminary determination had been made that the overpayment existed but that appellant was without fault in its creation and could therefore seek waiver of recovery of the overpayment, it instructed her to submit a detailed explanation of her reasons for seeking waiver, fully complete and submit an enclosed overpayment recovery questionnaire, and attach any supporting documents. Appellant, however, failed to respond, failed to complete the overpayment recovery questionnaire, and failed to provide any supporting documentation.

Section 8129(a) of the Federal Employees' Compensation Act³ provides that where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to

² See *Jacob Adams*, 40 ECAB 870 (1989).

³ 5 U.S.C. § 8129.

which an individual is entitled. Section 8129(b) describes the only exception to the Office's right to adjust later payments or to recover overpaid compensation:

“Adjustment or recovery by the United States may not be made when incorrect payment had been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”

The fact that an individual is without fault in the matter of an overpayment does not, by itself, preclude the Office from adjusting later payments or recovering the overpayment amount, as explained by section 8129(b) quoted above. This section prohibits adjustment or recovery when the individual is without fault *and* when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience. Thus, because appellant is without fault in the matter of the overpayment, the Office may, in accordance with section 8129(b), adjust later payments or recover the overpaid amount only if adjustment or recovery would neither defeat the purpose of the Act nor be against equity and good conscience. The guidelines for determining whether adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience are respectively set forth in sections 10.322 and 10.323 of Title 20 of the Code of Federal Regulations.⁴

Section 10.322(a) provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving the overpaid individual of income and resources needed for ordinary and necessary living expenses and if the individual's nonexempted assets do not exceed a resource base of \$3,000.00, or \$5,000.00 if the individual has a spouse or one dependent. Section 10.323 provides that recovery of an overpayment is considered to be against equity and good conscience if the overpaid individual would experience severe financial hardship in attempting to repay the debt, with “severe financial hardship” determined by the same criteria set forth in section 10.322, or if the individual, in reliance on the overpaid compensation, relinquished a valuable right or changed his position for the worse.

The Form OWCP-20 overpayment recovery questionnaire is designed to obtain the financial information necessary to determine whether adjustment or recovery would defeat the purpose of the Act. Appellant did not submit the Form OWCP-20 the Office provided with its preliminary decision dated October 25, 1995, and she did not otherwise submit financial evidence or supporting documentation to establish that recovery of the overpayment would defeat the purpose of the Act. Neither has she argued or submitted evidence to establish that recovery of the overpayment would be against equity or good conscience because, in reliance on the overpaid compensation, she relinquished a valuable right or changed her position for the worse. Although appellant is without fault in the matter of the overpayment, she nonetheless bears responsibility for providing the financial information necessary to support her request to

⁴ 20 C.F.R. §§ 10.322-323.

waive recovery of the overpayment. Section 10.324 of Title 20 of the Code of Federal Regulations states in this regard:

“In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial documentation described in § 10.322 as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in the denial of waiver and no further requests for waiver shall be entertained until such time as the requested information is furnished.”⁵

Whether to waive an overpayment of compensation is a matter that rests within the Office’s discretion pursuant to statutory guidelines.⁶ Generally, an abuse of discretion can be shown only through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ The Board has long held that when a claimant submits no financial evidence to support her request to waive recovery of an overpayment, the Office commits no abuse of discretion in denying that request.⁸ As appellant submitted no evidence in this case to establish that recovery of the overpayment would defeat the purpose of the Act or be against equity and good conscience, the Board finds that the Office did not abuse its discretion in refusing to waive recovery of the overpayment.

Finally, the Board finds that the Office properly recovered the overpayment by withholding \$196.14 from appellant’s continuing compensation benefits.

As noted above, the Office’s regulations provide that in the case of an overpayment to an individual entitled to further compensation, proper adjustment will be made by reducing subsequent payments having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and other relevant factors so as to minimize any resulting hardship upon the individual.⁹ In this case, the record establishes that appellant failed to submit an overpayment recovery questionnaire or any other evidence from which the Office could determine what amount appellant could afford to repay out of her continuing compensation benefits. The Office, therefore, considered the total amount of compensation appellant was receiving and determined that \$196.14 withholding from compensation would promptly repay the overpayment with the least amount of burden on appellant. The Board finds that the Office did not abuse its discretion in this calculation.

⁵ 20 C.F.R. § 324.

⁶ See *William J. Murphy*, 40 ECAB 569 (1989).

⁷ *William F. Osborne*, 46 ECAB 198 (1994).

⁸ *Supra* note 6.

⁹ 20 C.F.R. § 10.321(a).

Consequently, the decision of the Office of Workers' Compensation Programs dated March 11, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 4, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member